A majority of the problems which presented themselves arose in the field of neutrality, the most unsettled portion of International Law; among them may be mentioned the duty of neutrals respecting the treatment of vessels of the belligerents that may enter their ports; how long they shall be permitted to stay, how many supplies, particularly of coal, they may take on board, how extensive the repairs that may be made without rendering the neutral liable to the charge of being remiss in its duties to the other belligerent. The twenty-four hour rule, as the limit for length of stay, except in an unusual case, found very general acceptance and the action of France in permitting such extensive use of her ports to the Russian Baltic fleet and thus making possible its journey to the East, Professor Hershey finds quite inconsistent with the best international practice.

The number of vessels of one of the belligerents which were interned by neutrals during the course of the war, the author thinks may fairly be regarded as establishing an authoritative practice, thus setting a new standard of neutral duty; the treatment provided by the Conference at The Hague for soldiers seeking refuge on neutral territory has thus been followed in practice regarding vessels, but it is to be hoped that the coming conference at The Hague may see fit to establish definite rules concerning this point as well as respecting numerous others.

Other questions of great importance raised were those regarding contraband, the sinking of neutral vessels, the placing of mines, whether fixed or floating, under such circumstances as may prove a danger to neutral commerce, and the use of wireless telegraphy.

Russia's attitude toward contraband was distinctly at variance with the recognized principles of International Law and in the face of the protests of the nations she was forced to modify her position. Generally Professor Hershey finds that Russia was the greater offender against the Law of Nations, though Japan does not come out entirely free from blame.

Practically all of the new questions that arose and the incidents connected with them are treated with fullness, and the discussions of the diplomacy connected with the causes of the war and its conclusion add greatly to the interest of the book and place it outside the category of works intended solely for the specialist in International Law.

THE PRINCIPLES OF THE LAW OF CONTRACTS. By JOHN D. LAWSON. Second Edition. St. Louis: The F. W. Thomas Law Book Co. 1905. pp. xxvi, 688.

It is easier to be sharp than to be fair. It is with this in mind, and constantly kept in mind, that a book review should be written, and it is in that attitude, and with a determination to choose the harder course and be entirely fair, that the present review is written.

Nothing of importance is added to the store of knowledge or thought on the subject of contracts by this book. The first edition of the work was not distinguished by any large degree of originality, and this second edition is not an improvement on the first in that respect. There is nothing of advantage in the mere multiplication of law books. If only

some of the talent and energy which are expended in rehashing old material, which in very many cases is bad material, were employed in sober, earnest thought and study, resulting in the correction of errors, and a reduction of even a small portion of this branch of the law to a scientific and sound basis, law writers would gain the gratitude and applause of lawyers and scholars and confer real benefits upon the profession. The present book is an illustration in point. The best parts of it are quotations from other writers and these quotations are not given the conspicuousness which they deserve. If the writer had selected some one topic of the many which he has treated in this volume and had devoted the time and attention which he has expended upon this work to investigation and thought upon that single topic, he would doubtless have produced a treatise which, by virtue of close analysis, sound reasoning and precision of exposition, would have gained a well-merited distinction among writings on legal topics. That kind of thing is only too rare. At it is, the book has little, or no, justification.

The work is characterized by lack of scientific treatment, looseness of expression, failure of correlation between different parts, inconsistency of statements, and confusion of ideas. Before passing to illustrations of these defects in the book, let us give the work the credit which is due it for evidences of a painstaking attempt to formulate a very detailed and clear, if not always scientifically arranged, table of contents. Many books fail in this respect, but this book exhibits a great deal of care, and well-warranted care, in this respect. The "table of contents" is defective and erroneous only because the portions of the text to which it refers, in various places, are defective and erroneous. For example, the "table" in terms makes distinctions which do not exist in principle. Sections 24 and 25 are designated respectively "acceptances must be absolute and unconditional," and "25—and identical with terms of offer." These two things, separately stated, are the same thing. Again, in the "table," we find, "section 30—acceptance makes irrevocable contract." It is only necessary to say that there is no such thing as a revocable contract, and therefore there can be no such thing, properly designated, as an "irrevocable contract." Among the methods by which an offer may be terminated, the author should have placed one which does not appear in his table at all, to wit, insanity of offeror or offeree intervening before acceptance. § 102 the author designates in his "table" "Consideration executed or executory." It is to be remarked that this terminology is loose and unscientific, and cannot but lead to confusion of ideas, because such a term as "executory consideration" is, in and of itself, a flat contradiction. An act or a promise which has been given as a consideration for another promise is, as far as consideration is concerned, executed; if it has not been given, it is no consideration at all; if it has been given, it thereby operates as a consideration, and the adjective executed is useless and confusing surplusage. It is amazing how text-book writers can lend themselves to the perpetuation of early misuses of language. When the terms "executed" and "executory" were first used, in connection with consideration, they were intended in the case of "executed" to convey the idea either that the consideration given for a promise was an act, or that a promise which has been given as a consideration had

been performed. Both of those uses of the word are erroneous. If an act has been done at the request of a promisor and in exchange for the promise, it is a consideration, and nothing is added by using the term "executed." Either the act has been given upon request and in exchange for the promise, or it has not. If it has, it is a consideration; if it has not, it is no consideration. Then take the term "executory." When it was first used, in connection with consideration, it was meant to indicate that the consideration consisted of a promise as distinguished from an act, but that was a confusing misuse of the term. Every consideration is "executed" in the sense that it has been given or used as a consideration, and if it has not been so given or used it is no consideration at all, "executory," "executed," or otherwise. So we come to this, the term "executory" as applied to consideration means that the consideration was a promise and that it has not been performed, but when the promise has been performed it is the *contract* which is thereby in whole or in part performed, and not the *consideration* which is performed. The consideration is performed or executed (if you could use those terms in connection with consideration, which you cannot) when it is given, whether it be an act or a promise, and as shown above it is not a consideration at all until it has been so given. Furthermore, the terms are not only unscientific and confusing, but they are useless, not only as applied to consideration, but as applied to contracts, as they sometimes are applied. All the meaning which has sought to be conveyed by those terms, and not properly conveyed, can be conveyed by two other terms which are clear, significant and scientific, to wit, the terms unilateral contract and bilateral contract, which mean respectively that a contract consists of a promise for which an act has been given, or one side of which has been performed, and (in the case of bilateral contract) that the contract consists of two promises, neither of which has been performed. If an act is given for a promise, you have a unilateral contract; if a promise is given for another promise, you have a bilateral contract; if in the latter case, one of the promises is performed you have a unilateral contract. What proper use is left for the confusing and unscientific terms "executed" and "executory" whether applied to consideration or to contract?

There is no such class of contracts as "written contracts," and no such class of simple contracts as "contracts required to be in writing." The author designates § 73 as "contracts required to be in writing" and thereby makes an improper division and designation. Promises under seal are specialties; bills and notes are quasi specialties, or, to put it more clearly, are to a certain extent specialties. It is obvious that there could not be a promise under seal nor a bill of exchange nor a promissory note except in writing, and therefore why should they be confused with a discussion of simple contracts to the extent of intimating as the author of this work does that they form a class together with contracts coming within the provisions of the statute of frauds, and that they should be known together as contracts required to be in writing? The statute of frauds does not require any contract or class of contracts to be in writing, and the contracts coming within its provisions are just as valid without a writing as with it. The statute of frauds is a rule of evidence, which

merely requires that, in the case of some contracts, only written evidence of their terms, if the point be insisted upon by the defendant, shall be competent evidence; indeed in a later section, to wit, § 87, the author recognizes the truth of this distinction, but the fault lies in this, that he leaves great room for confusion and error by leaving it to be inferred from § 73 that the attempted contract is nothing unless it is in writing. § 73 and § 87 therefore are inconsistent and disclose lack of correlation between various parts of the work.

The propositions stated for Sections 96 and 97 exhibit looseness of language if not ignorance of substance. They read as follows:

"§ 96. Consideration essential to simple contracts"; and "§ 97. Cases where consideration not essential." Of course there are no simple contracts in which consideration is not essential, although the author in the text under § 97 describes some instances in which he thinks he finds them. In an inexcusable way in this section, he mixes up promises under seal which at common law need no consideration, with gratuitous bailments, which are in all cases promises based upon a consideration, and bills and notes which are likewise contracts requiring a consideration in every instance. It is almost beyond belief that an author of a work on contracts should at this day assert the proposition that what is ordinarily called a gratuitous bailee is not bound to his promise by the giving of a consideration consisting in the surrender of his right by the bailor in exactly the same sense that the promisee in every other contract surrenders a right in exchange for the promisor's engagement. And yet, that is just the proposition asserted by the author in § 97. In this respect, his confusion arises from a deeper cause than any which has been yet referred to, to wit, his failure to recognize the true character of the consideration. He is possessed by the idea that consideration consists in benefits to the promisor, and it is nothing to the contrary of this fact of his "being possessed" of this idea that in some portions of his work he intimates that "another good definition (of consideration) is an act or forbearance called for and induced by the promise." He really does not mean that he considers this a good definition of consideration, or if he does he is very inconsistent, because in § 15 he says: "The reason is that in our law no promise, which is not under seal, is binding, unless the promisor obtains *some benefit* in return for his promise, and this benefit is called 'consideration.'" And by that he means that benefit to the promisor is the real test of consideration as shown by his assertion in § 97 that, because the gratuitous bailee gets no benefit from the bailment, therefore there is no consideration for his promise, although the bailor has surrendered his right to keep possession of the goods in exchange for the promise.

If this work were to be widely used, great injury would result to those who might use it. Carelessness in the use of language, and in the analysis of principles, is bad enough, but the enunciation in clear language of unsound propositions, and the erroneous statement of the decisions rendered in cited cases is much worse. In § 14, the author states that "the time tables published by a railroad company are an offer made to all persons who apply for carriage that the trains will run as advertised." This is not the law, and the case which he cites for the proposi-

tion, *Denton* v. *Great Northern Railway Co.*, 5 E. & B. 860, does not hold the proposition which he says it does. The decision was reached by three judges, two of whom decided in favor of the plaintiff, because they said the defendant was liable in tort, and they said also perhaps in contract. The third judge said that there was no liability in contract, but the liability was wholly in tort. Again, he says, that in the case of the offer of reward, the doing of the act called for by the offer, as for example, the furnishing of information, is an acceptance, and upon such acceptance the agreement becomes complete. The cases have held again and again that this is not the law, but that the law is that a plaintiff in an action to recover the reward must show not only that he gave the information or did such other act as is called for by the offer but that he did it or gave it with knowledge of the offer and with the intention of accepting the offer. Furthermore, the case which the author cites, *Williams* v. *Carwardine*, 4 B. and Ad. 621, is pretty generally recognized not to be good law, and has been disapproved in many decisions.

Again, in the same section, fourteen, subdivision (f) the author says, in substance, that if a man goes into a store and orders an article sent up to his house without asking the price, and the article is sent accordingly, he agrees to pay the particular merchant's price. This is not true. He agrees only to pay the reasonable or market value of the article.

The looseness of language used in the book may be illustrated by two further references. In § 17 the author says: "Where the offer is made conditional on the offeree doing something, the doing of the thing required completes the agreement." It is an inaccurate use of language to say that an offer which is made contemplating a unilateral contract is a conditional offer or an offer made upon the condition of the performance of the act requested. The act which forms the consideration for the promise in a unilateral contract cannot be at the same time a condition of the promise; neither can the consideration for the promise involved in such an offer be properly spoken of as the condition of the offer. Again in § 25, the author says: "So if one makes an offer and accepts acceptance not responsive to the proposal, he is bound by the agreement thus made." That language is so loose that it can hardly be analyzed into its component errors. An "acceptance not responsive" is no acceptance at all, and accordingly the offeror could not accept such "acceptance." Furthermore, one does not speak in the law of contracts of accepting anything except an offer. The idea which the author seems to have intended to convey is this: An acceptance which is not responsive to the terms of the offer amounts, at best, to nothing more than a counter offer, which the original offeror may accept if he chooses.

In speaking of attempted acceptance of offers made by post, the author of this book makes an observation which is the substance of all his reasoning on this point, and which carries with it its own best commentary, to wit (in § 26): "In a variety of ways an acceptance may be *communicated* without the offeror actually receiving notice of it." In § 32, the author makes the amazing statement that in case of a contract of option the offer is irrevocable. It is sufficient answer to this to call attention to the fact that if this were true the contract of option could

never be broken, and we would discover the phenomenon of a class of contracts not capable of breach.

The author can hardly escape the charge of carelessness, lack of precision, and the announcement of misleading and incorrect principles when he says, as he does in § 71, that a conveyance of real estate is a contract; and when he says, as he does in § 106, in substance, that mutuality need not be present at the inception of a contract, but may be "subsequently present"; and when he says, in the case of offers and acceptances by mail, the post is an agent of the offeror, in the same sense that a messenger would be, authorized by the offeror, omitting to point out that there would be no "communication of acceptance" even in the case of the messenger-agent, unless the agent, under authority, opened and read the letter of acceptance; and when, finally, he says, in the introduction, at page 5, "an offer of a reward is a good example of a unilateral contract."

But there is no need of multiplying instances.

We regret exceedingly that we cannot accord any praise to this book.

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